

SENATE BILL 1559

By Carter

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 6, Part 2, relative to pawnshops.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-6-203, is amended by adding the following language as new, appropriately designated subdivisions:

() "Appropriate law enforcement agency" means the police department of the city or town in which a pawnshop is located or, if the pawnshop is not within a city or town or there is no police department in the city or town in which a pawnshop is located, the sheriff's department in the county in which a pawnshop is located. For the purpose of submitting the information required by § 45-6-209, the appropriate law enforcement agency may designate not more than two (2) other law enforcement agencies as the recipient of such information, in which case the pawnbroker shall submit such information to the designated law enforcement agency or agencies.

() "Major shareholder" means any person who owns or has a controlling interest in five percent (5%) or more of a corporation.

SECTION 2. Tennessee Code Annotated, Section 45-6-204, is amended by deleting subsection (a)(7) in its entirety and substituting instead the following:

(7) Make over-the counter purchases of goods which the seller does not intend to buy back. The pawnbroker shall hold such goods for a period of not less than twenty (20) business days before offering the merchandise for resale to the public, provided that such goods may not be transferred to another pawnshop or pawnbroker until at least sixty (60) days have elapsed from the time of the purchase; and

SECTION 3. Tennessee Code Annotated, Section 45-6-206, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) To be eligible for a pawnbroker's license, an applicant must:

(1) Be of good moral character;

(2) Have net assets, as defined herein, of at least seventy-five thousand dollars (\$75,000), readily available for use exclusively in conducting the business of each licensed pawnbroker;

(3) Show that the business will be operated lawfully and fairly within the purpose of this part; and

(4) If so requested by the appropriate law enforcement agency, have a computer system which is capable of electronically transferring information and shall electronically transfer the daily reports required by § 45-6-209 to the appropriate local law enforcement agency.

SECTION 4. Tennessee Code Annotated, Section 45-6-209, is amended by deleting the section in its entirety and substituting instead the following:

§ 45-6-209. Records and recordation; inspection and inspectors

(a) Every pawnbroker shall keep a consecutively numbered record of each and every pawn transaction which shall correspond in all essential particulars to the detachable pawn ticket attached. The consecutive numbering process for pawnbroker transactions dealing with over-the-counter purchases

described in § 45-6-204(a)(7) shall be numbered and identified independently from a buy-sell agreement or a loan of money transaction.

(b) The pawnbroker shall, at the time of making the pawn transaction or buy-sell transaction, accurately enter upon the pawnshop copy of the records as well as on the pawn ticket or buy-sell ticket, all the following information, which shall be typed or written in ink and in the English language:

(1) A clear, complete and accurate description of the property, including serial numbers if pledged articles shall bear such.

(2) The date and time of the pawn transaction.

(3) The amount of cash loan advanced on the pawn transaction.

(4) The maturity date of the pawn transaction, which date shall not be less than thirty (30) days after the date of the pawn transaction.

(5) The name, race, sex, height, weight, date of birth, residence address and numbers from the item or items used as identification by the pledgor. Acceptable items of identification are the following, any of which must be current and valid:

(A) A state-issued driver's license;

(B) A state-issued identification card;

(C) A passport;

(D) A valid military identification;

(E) A nonresident alien border crossing card;

(F) A resident alien border crossing card; or

(G) A United States immigration and naturalization service identification.

(6) The right thumbprint of the pledgor, provided that if taking the right thumbprint is not possible the pawnbroker shall take a fingerprint from the left

thumb or another finger and shall identify on the pawn ticket which finger has been used. The thumbprint shall be taken on the front or the back of the pawn ticket or on a copy of the purchase ticket or a separate document identified to the particular pawn customer and pawn transaction. Whenever a thumbprint or pawn ticket is retrieved from the pawnbroker by the appropriate law enforcement agency, the appropriate law enforcement agency will leave a signed receipt with the pawnbroker.

(c) The pledgor shall sign the stub providing the pledgor's residence address and shall receive the detached pawn ticket; the stub shall also be signed by the pawnbroker.

(d) The records required to be kept under subsection (b) shall be kept without alteration by the pawnbroker for not less than one (1) year and shall be available for inspection each business day except Sunday by any law enforcement agency. At the end of said one-year period, the pawnbroker shall surrender the original of such records upon request to the appropriate law enforcement agency or may destroy such records at its discretion.

(e) The governing body of the appropriate law enforcement agency may require that licensed pawnbrokers in its jurisdiction shall have computer systems in operation capable of electronically transferring information and, within forty-eight (48) hours following the day of pawn transactions, electronically transfer the information required by subsection (b)(1) through (5) to the appropriate law enforcement agency. Any such computer system shall be installed and operational within six (6) months of the effective date of any such requirement. Any pawnbroker that has not averaged at least fifty (50) pawn transactions per week in the preceding twelve (12) months may not be required to maintain such a computer system or to electronically transfer such reports. No law enforcement agency other than the appropriate law enforcement agency may require the

electronic transfer of such reports from a pawnbroker except that the appropriate law enforcement agency may designate not more than two (2) other law enforcement agencies as the recipient of such information, in which case the pawnbroker shall submit such information to the designated law enforcement agency or agencies.

(f) The appropriate law enforcement agency shall make computer software available at no cost to all pawnshops required to electronically transfer such reports; such software shall enable the pawnbroker's computer system to record and electronically transfer the information required by § 45-6-209(b)(1) through (b)(5). All such pawnshops shall electronically transfer such required information to the appropriate law enforcement agency or its designee (1) using the software provided by the appropriate law enforcement agency, (2) using software compatible with the software used by the appropriate law enforcement agency or its designee, or (3) in ASCII text format. If the pawnbroker transfers such information on reusable media such as floppy disks, the appropriate law enforcement agency or its designee will provide such media at no cost to the pawnbroker. If the pawnbroker transfers such information via modem or internet, the pawnbroker will provide such modem or internet service. Any new pawnshop shall have six (6) months within which to begin transferring such information electronically.

(g) Pawnbrokers not required to electronically transfer information shall deliver the information required by subsection (b)(1) through (5) to the appropriate law enforcement agency, by mail or in person, within forty-eight (48) hours following the day of such transactions. Delivery by mail shall be deemed made when deposited in the United States mail, postage prepaid.

SECTION 5. Tennessee Code Annotated, Section 45-6-212, is amended by deleting subsection (5) in its entirety and substituting instead the following:

(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with goods of like kind. In the event the pledgor and pawnbroker cannot agree as to replacement with goods of like kind, the pawnbroker shall reimburse the pledgor for an amount of at least two (2) times the amount originally loaned on the article;

SECTION 6. Tennessee Code Annotated, Section 45-6-213, is amended by deleting the section in its entirety and substituting instead the following:

§ 45-6-213. Statement of pledgor; availability to law enforcement; stolen property; restitution

(a) When any person sells property to a pawnbroker or pledges property as security for a loan, the pawnbroker shall obtain and record the information provided for in § 46-6-209(b) and obtain a statement of the pledgor that the pledgor is the lawful owner of such item, as provided in § 46-6-211(d), and have the record signed by the person from whom the pawnbroker receives the property. A copy of this record shall be made available to any law enforcement agency or officer upon request.

(b)(1) The party asserting ownership of any property, which the party alleges is stolen and which is in the possession of a pawnbroker, may recover such property by making a report to the appropriate law enforcement agency of the location of such property and providing the appropriate law enforcement agency with proof of ownership of the property, provided, that a report of the theft of the property was made to the proper authorities within thirty (30) days after obtaining knowledge of the theft or loss; and provided further, that the party asserting ownership will assist in the prosecution of the party pawning such item.

Upon the receipt of such proof of ownership, an officer from the appropriate law enforcement agency may recover or may authorize in writing any law enforcement officer to recover the property from the pawnbroker, without expense to the rightful owner thereof, unless the pawnbroker presents evidence of having received proof of ownership of such property by the person who sold same to the pawnbroker or pledged the property as security for a loan. Any property recovered from a pawnbroker, pursuant to this section, shall be returned to the rightful owner thereof, subject to evidence in any criminal proceeding.

(2) In the event that the party asserting ownership of the pawned article has provided such timely report of the theft or loss of such article, and the pawnbroker presents acceptable evidence to the law enforcement agency of having received proper proof of ownership from the person selling or pledging the property, then and only then shall it be understood the law enforcement agency has satisfied its processes, duties and responsibilities. The law enforcement agency shall then inform the party alleging ownership that it will be necessary for that person to commence an appropriate civil action for the return of the items within (30) days of receiving such notice. The pawnbroker shall not be required to surrender such property to any law enforcement officer or agency or any other person absent an appropriate warrant.

(3) If for any reason after the local authorities have seized certain property and are unable to locate the rightful owner thereof after due diligence, then such property can be returned to the pawnbroker upon the pawnbroker executing a hold-harmless agreement to the local authorities pursuant to Title 40, Chapter 33.

(4) In any criminal prosecution for theft of any property which has been recovered from a pawnshop and returned to its rightful owner, the court shall

provide for restitution from the defendant or defendants to such pawnshop for any losses suffered by the pawnshop as a result of the return of such property to the rightful owner. Such losses shall be measured as (1) the amount loaned on such property plus any interest and fees due on such pawn transaction as if the property had been redeemed at the end of the month in which the property is recovered from the pawnshop, or (2) if the property has been purchased by the pawnshop, the amount paid by the pawnshop for such property. Interest shall accrue on any such losses from the date of the recovery of the property from the pawnshop at the rate of ten percent (10%) per annum until such losses have been repaid. A pawnbroker may obtain a civil judgment in a court of competent jurisdiction based upon such an order of restitution. Any such civil action must be filed within six (6) years of the date of the order of restitution or the date of the last payment made by the defendant if any payment has been made.

SECTION 7. Tennessee Code Annotated, Section 45-6-215, is amended by deleting the section in its entirety and substituting instead the following:

§ 45-6-215. Safekeeping of pledges on premises; insurance

Each pawnbroker licensed under the provisions hereof shall provide a safe place for the keeping of the pledged items of property on the premises listed on the pawnbroker's license. Each pawnbroker shall have sufficient insurance coverage on the property held on the pledge for the benefit of the pledgor to pay an amount at least two (2) times the amount of the loan as recited on the pawn stub of the pawned article in case of destruction, theft, or loss of such item. Such policy shall be made payable, in the case of loss, to the county clerk for the benefit of the pledgor to such extent, and such policy shall be deposited with the county clerk.

SECTION 8. Tennessee Code Annotated, Section 45-6-218(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a) Every person, firm or corporation, or agents or employees thereof, who knowingly violates any of the provisions of this part shall, on conviction thereof, commits a Class A misdemeanor. If such violation is by an owner, major shareholder or managing partner of the pawnshop, and such violation is knowingly committed by such owner, major shareholder or managing partner of the pawnshop, then the license of such pawnbroker or pawnbrokers may be suspended or revoked at the discretion of the county clerk after notice and a hearing pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, with such pawnbroker having the right to a de novo hearing in the appropriate chancery court to contest such suspension or revocation, the decision of the county clerk shall be stayed pending the final adjudication of the suspension or revocation by the chancery court.

SECTION 9. Tennessee Code Annotated, Section 45-6-219, is amended by deleting the section in its entirety and substituting instead the following:

§ 45-6-219. Counties, municipalities, cities and taxing districts; ordinances; rules and regulations

(a) Counties, incorporated municipalities, cities and taxing districts in this state shall have the authority by ordinance to adopt the provisions of this part and shall have the authority to adopt such further rules and regulations as the legislative bodies of such counties, incorporated municipalities, cities and taxing districts may deem right and proper. No county, incorporated municipality, city or taxing district shall have authority to:

- (1) Regulate interest, fees or insurance charges;
- (2) Regulate hours of operation;
- (3) Regulate the nature of the business or types of pawn transactions;

(4) Regulate license requirements or require a pawnbroker's license from the county, incorporated municipality, city or taxing district;

(5) Require information from reports or pawn tickets different from that required in § 45-6-209; or

(6) Require a pawnbroker to hold over-the-counter purchase of goods which the seller does not intend to buy back for a period of more than twenty (20) business days before offering the merchandise for resale to the public provided that such goods may not be transferred to another pawnshop or pawnbroker until at least sixty (60) days have elapsed from the time of the purchase.

(b) No county, municipality, city or taxing district may charge any fee for receiving, reviewing or processing daily reports or pawn tickets as set forth in this part.

SECTION 10. Tennessee Code Annotated, Section 45-6-221, is amended by deleting the section in its entirety.

SECTION 11. This act shall take effect July 1, 2001, the public welfare requiring it.